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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/926,199

09/24/2001

Mitsuaki Yamamoto

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01/10/2007

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EXAMINER

FOSTER, CHRISTINE E

ART UNIT

PAPER NUMBER

1641

MAIL DATE

DELIVERY MODE

01/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/926,199

Applicant(s)

YAMAMOTO ET AL.

Examiner

Christine Foster

Art Unit

1641

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 18 September 2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

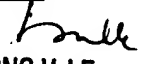
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 31 and 40.
Claim(s) rejected: 31, 32, 40, 44 and 45.
Claim(s) withdrawn from consideration: 33-39, 41-43 and 46-61.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). 03/13/2006, 07/07/2006.
13. ☒ Other: See Continuation Sheet.


LONG V. LE 01/07/07
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Continuation of 3. NOTE:

Applicant's amendment, filed after notice of appeal but prior to the filing of a brief, will not be entered because it does not comply with the provisions of MPEP 1206. Specifically, the proposed amendments raise new issues requiring further consideration and/or search in that new claim 62 now recites that the surfactant is selected from the group of compounds recited in lines 5-7. Of the recited compounds, only polyoxyethylene alkylene phenyl ether was previously recited in the claims (see claim 44 in the immediate prior version of the claims). Thus, the presentation of additional types of surfactants never previously recited in the claims raises new issues. In addition, new claim 62 now requires that the reagent for determining cholesterol be selected from the group consisting of (1) cholesterol esterase and cholesterol oxidase and (2) cholesterol esterase and cholesterol dehydrogenase, which raises new issues requiring further consideration and/or search since these enzyme combinations were never previously recited in the claims.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments regarding the rejections of record are acknowledged but are moot in light of the non-entry of the amendment for the reasons discussed above.

Continuation of 13. Other: The information disclosure statement filed 07/07/06 fails to comply with 37 CFR 1.97 because it lacks a statement as specified in 37 CFR 1.97(e). It has been placed in the application file, but the information referred to therein has not been considered.

The information disclosure statement filed 3/13/06 was not received by the examiner until after the mailing of the previous Office action on 3/17/06. The references therein have been considered by the examiner as indicated on the attached form PTO-1449. The second entry on that IDS has been lined through because it refers to the instant application.